Cain: How Brownell Added The "Faceless Judgment" to The "Faceless Informer," Page 2.

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The View From A (Non-Ivory) Washington Tower

HEADNOTE ON THE NATIONAL MOOD: Quite by accident we ran across an old friend who gave us a glimpse of the mood which prevails in Washington today among the "crusaders" on both sides of the fence. He is close to those who have been campaigning for reform of loyalty-security regulations. "But is the country really interested?" he asked gloomily and answered himself. "There is no sign that it is." There was discouragement in the turnout to hear Harry Cain's two days of testimony before the Hennings committee; the big Senate caucus room was only sparsely filled, though loyalty-security abuses are or should be a burning local issue in the District of Columbia.* Cain at the moment seems to be at a dead end politically. The Republicans that matter here hate his guts, especially because he succeeded in going over their heads to the President. In his native State of Washington, waterfront labor is firmly committed to Senator Magnuson's reelection, though that frightened liberal fathered the Act which permits faceless informer testimony in waterfront cases. The only consolation is that, from what my friend says, there is the same despondency on the other side, and he—by a curious set of circumstances which I cannot enter into—is in a position to know. The obscure defectors paraded by Eastland's Internal Security Committee cannot hope to match the exposes of Communism being put on in Moscow—at no cost to the American taxpayer—by Krushchev. "Walter feels disgusted, too," my friend said of the House Un-American Activities chairman. "He feels that nobody is paying much attention to him either." The Paul Robeson appearance before Walter's Committee drew even fewer people than Cain's performance. As we go to press, Arthur Miller is scheduled to go before the Committee in the hope that maybe his connection with Marilyn Monroe will put it back on the front pages. It will take more than that tedious dossier compiled on Miller by Aware, Inc., to get a rise out of bored city editors. The country seems to be apathetic about loyalty-security injustices but jaded with red-and-pink sensations. It looks as if the Miller appearance can turn the trick for poor Walter only if the Committee pulls a real surprise—say, an infra red photograph to prove that Miller tatooed atom bomb secrets on Marilyn's lovely bottom, ready to rush Eastward with it as soon as the State Department granted him a passport. *EXTRA!*

NOT PREVENTIVE WAR, BUT PREVENTIVE CRISIS: Ben Gurion is Israel's Churchill, Goldie Mayerson is a female Gibraltar. Moshe Sharrett is not made of stuff as stern. The new Cabinet shift is not a preparation for preventive war; "B. G." feels too deeply about the price of a new war and a new victory: the cream of this Israeli generation's youth. But he is not disposed to stand by and let events drift. A preventive crisis—a showdown, let us say, over the water development on the Syrian-Israeli border—might force a peace settlement. The alternative is to drift while both East and West play to the Arabs and arm them until they feel themselves strong enough to overwhelm Israel. Ben Gurion may feel it is better to take the risk now before the Arab States are prepared. "B. G." has always been less impressed by the State Department than Sharrett, and more prepared to play an independent line. State Department rigidity is blamed in some Israeli circles for failing to exploit the willingness of Bulganin and Krushchev in April to back a peaceful Arab-Israeli settlement "on a mutually acceptable basis." If the U. S. had not vetoed the idea of a four-power resolution at the UN, a wedge might have been driven between Moscow and the Arabs. That April statement hit Arab capitals hard. UN Soviet delegate Arkady Sobolev, according to a well-informed source, approached the British delegation with the idea of a resolution which would have put the Security Council on record as stating that full observance of the armistice was not—as the Arab States insist—an end in itself but a preliminary to a general peace. Britain was ready to accept the idea of a four power resolution along these lines; so were the French. Dulles vetoed the idea. The result is the Shepilov tour. But what if Moscow were to pull a surprise and play peacemaker in the Middle East? The question may only reflect a wistful Israeli hope, but the possibility cannot be excluded. *Le Monde* reported recently that Nasser was prepared to give up insistence on the 1947 partition plan as a basis for peace, but had run up against too much opposition from Syria and Jordan.

ROUND THE CAPITOL: The President's illness was worth a lot to the aviation industry; if the doctors will only keep him in the hospital a few weeks longer, the air lobby may get that full extra billion voted them in the Senate Appropriations Committee. . . . Note the lineup on this issue: the Democrats are the backers, the Republicans the opponents, of the air lobbyists. . . . That Turkish threat to invade Cyprus is believed here to be pre-arranged with diehard circles in London looking for a last desperate excuse to hold onto an island overwhelmingly Greek. . . . The Federal aid to school construction bill is given some chance of passing at this session, but no one believes the civil rights bill will get past Eastland as Senate Judiciary Committee chairman if and when House Rules Committee Chairman Smith finally lets it get to a vote in the House.

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*** Last Tuesday night, however, a District of Columbia American Legion post, Cooley-McCullough No. 22, unanimously adopted a resolution praising Cain's "courageous stand against the injustices and inequities of the Federal loyalty-security program."**

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How Herbert Brownell Imitated Franz Kafka—As Told By Harry Cain

Adding "Faceless Judgment" to "Faceless Informers" in Security Cases

The most serious aspect of Harry Cain's two days of testimony before the Senate's Hennings committee got the least attention in the press. He spelled out the way security board regulations have slowly and quietly been changed during the Eisenhower Administration so that the reasons for finding a man a security risk are no longer disclosed to him.

Few Americans realize that to the evil of the faceless informer has been added the evil of an equally "faceless" judgment. Just as the NKVD under Stalin had the power to send men to death or labor camps without telling them why, so Federal employes in this country have been branded for life as untrustworthy without being told the reasons. This is a great administrative convenience; it disposes of bother with appeals, since no man can appeal effectively against a judgment whose content—Kafka style—is kept a secret from him.

The Lowest Point in Brownell's Record

In setting forth this change fully on the record before the Senate committee, former Senator Cain struck another blow in what has become a duel between him and Attorney General Brownell. The maverick member of the Subversive Activities Control Board not only showed that this change was the Attorney General's handiwork but had the temerity to link it with the William Henry Taylor case. In doing this, Cain put a rough hand on the sorest point in Brownell's record—the "twenty years of treason" campaign launched by Brownell and J. Edgar Hoover with their attack on the late Harry Dexter White before the Senate Internal Security Committee November 17, 1953.

Taylor, whom Brownell mentioned in that testimony, was the last member of the so-called "White ring" still in government employ in Washington. It was a defeat for Brownell and Hoover when last January 5 the International Organizations Loyalty Board of the U.S. Civil Service Commission found there was no reasonable doubt as to Taylor's loyalty. Taylor since 1946, when he left the U.S. Treasury, had been an employe of the International Monetary Fund in Washington. The point Cain made to the Hennings committee was that Taylor, like Abraham Chasanow before him, was only able to clear himself because he had been able to learn the reasons for earlier decisions against him.

An American "Bordereau"?

The inescapable inference of the Cain testimony was that Brownell in changing the regulations was making it much more difficult in future security cases for men to clear themselves. The importance of the change was emphasized by Cain's testimony that he considered that the main item of evidence against Taylor "may have been fabricated"; Cain compared it to the forged "bordereau" in the Dreyfus case.

The original findings against Taylor were based on Elizabeth Bentley testimony. As a result, Cain said, "Mr. Taylor presented a long and documented brief designed to point out inconsistencies and contradictions in the Bentley spy revelations both as they related to Taylor and to other persons named by her."

A Letter in Too Many Versions

The hearing board thereupon minimized the Bentley story and found against Taylor on the basis of a letter purported to have been written by William Ludwig Ullmann. Ullmann then "testified under oath that he was convinced that he neither typed nor dictated the letter." On the basis of this testimony and of evidence which showed that this same letter "had circulated in various versions bearing three different dates," there was a final decision completely clearing Taylor.

Here is how Cain spelled out the Brownell changes for the Hennings committee. The Eisenhower loyalty-security program (Executive Order 10450, dated April 27, 1954) originally provided—Cain said—"that, in most instances, no employee would be found by a hearing board to be a security risk, or continued on his job after a hearing without being told in written form *why* the Board had reached its decision." (Italics in original.)

Add Nixon "New Look"?

On ABC's "College Press Conference" last Sunday, June 17, Harry Cain said he had advised Vice President Nixon not to use the communism-in-government issue in the 1956 presidential campaign. Nixon, Cain told his interviewers, "is not going out in 1956—not if I can put words in his mouth—and say things that are not true." Cain said he had been in correspondence with the Vice President and believed Nixon was seriously considering his views.

A Loophole That Was Not Large Enough

Sample regulations supplied to the head of each agency on July 6, 1953, by the Attorney General "and designed to establish minimum standards" provided that the decision of the security hearing board must be in writing, and that one copy must be sent to the employe whose case was before it.

"The decision itself," the regulations said, "will not contain the reasons why the Board reached its decision. A separate *Memorandum of Reasons* will be prepared for that purpose."

The reason for separating the two soon appeared, for the regulation governing the "Memorandum of Reasons" said, "A copy will be made available to the employee in every case in which it does not contain reference to confidential information, witnesses or material, the source or existence of which must be protected."

This loophole was not large enough, as the Chasanow case in 1953 soon demonstrated. The hearing board found that he was loyal, trustworthy and reliable. It was his knowledge of this decision and of the reasons for it which enabled Chasanow successfully to clear his name when the head of the department ordered him discharged as a security risk.*

Decision in The Dark

In 1954, as an obstacle to future "Chasanow" reversals, two changes in the regulations were circulated to all departments of the government "as approved by the Attorney General." The first on July 3, 1954, eliminated the original requirement that the employe be given a Memorandum of the Reasons for the decision in his case. The second, on July 28, 1954, eliminated the previous requirements that the person accused be given a copy of the bare decision itself. The change in regulations added the word "advisory" before the word "decision." Henceforth the employe was to know only the final decision by his agency or department head.

The effect of the change was to deny the accused not only a statement of the hearing board's findings but even to keep secret from him whether its decision was favorable or adverse. In little more than a year, as Cain told the Hennings committee, "the individual was to go from where he was advised of *how and why* the decision found for or against him, *to darkness, doubt and confusion.*" He was to be told only whether he was being fired or retained.

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* Cain told the committee Chasanow was now acting as adviser to Twentieth Century Fox on a picture story of Chasanow's "life and troubles with his government." It is good news that Hollywood has the nerve to tackle the loyalty purge.

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The Lions He Prepared to Face May Turn Put to Be Miserably Legalistic Alleycats

Little Prospect of A Clear First Amendment Ruling in O'Connor's Case

The Court of Appeals in Washington has nine judges. Cases are usually heard by three. The three chosen last week to hear Harvey O'Connor's appeal from a McCarthy committee contempt conviction were Edgerton, Fahy, and Burger. Most legal handicappers—to import racetrack terminology into jurisprudence—would say this favored O'Connor to win 2-to-1. Edgerton, the chief judge, is one of the great liberal judges of our time. Fahy, one-time New Dealer, is mildly liberal. Burger, the third member of the panel, is the Circuit's newest judge; he was an Assistant Attorney General before he was elevated to the bench last April.

So it looks as if there might be a 2-to-1 decision for O'Connor. Unfortunately—as the old *Morning Telegraph* would have put it—the favorite faces a muddy track. To the naked lay eye, O'Connor's challenge to McCarthy was a clear one. The author of "Mellon's Millions" and many other famous works declined to invoke the Fifth when asked about his political views. O'Connor took the First instead. He thereby made himself a legal guinea pig to test whether the First Amendment could protect a man from Congressional inquisition. The O'Connor case is the only First Amendment contempt case left in the courts, since the similar challenge by Lamont, Shadowitz and Unger was won on a technicality and is being appealed by the government on a technical basis. O'Connor, on the other hand, lost in the District Court on the First Amendment issue, and was fined $500 and given a suspended sentence of one year in jail. It had been hoped that his appeal would bring the issue squarely before the Supreme Court, which has yet to pass on a First Amendment contempt case.

For Once The Courts Were Swift

Unfortunately, while O'Connor's chances of winning on a lesser technical point are good, his chances of winning on the First Amendment issue are close to nil. There is no doubt that this is the issue on which O'Connor would win if Judge Edgerton had his way. In 1948, when the First Amendment issue got to this same Circuit Court in the *Hollywood Ten* and *Barsky* cases, Edgerton wrote a dissent in the latter which ringingly affirmed that ideological inquisition by Congressional committee "abridged" the basic freedoms guaranteed by the First Amendment. This dissent will some day be history but is not yet law. Last January 26 Edgerton almost made it the law in a 2-to-1 decision (Edgerton and Bazelon) reversing the contempt conviction of John T. Watkins, a United Automobile Workers official who had admitted his own past membership in the Communist party but refused on First Amendment and moral grounds to discuss the political past of others. That Edgerton decision promised well for the O'Connor case until a rehearing was ordered before the full bench. On April 23, voting 6-2, the full bench reversed Edgerton, held Watkins guilty and in sweeping terms upheld the powers of the Un-American Activities Committee. Edgerton's liberal decision was expunged with a rare judicial celerity.

Thus chastened, Edgerton will hardly venture to invoke the First Amendment in the O'Connor case, though it would not be hard to "distinguish" between the almost venerable powers of the House Committee to inquire into "subversion" and the vaguer and more dubious mandate of the McCarthy committee. There are other ways of skinning this particular cat if the majority so chooses. The McCarthy committee was investigating the overseas library program of the State Department; this was in the jurisdiction of the Senate Foreign Relations Committee, which had just finished investigating the library program. There is no record of a specific authorization from the full committee to the subcommittee. What did O'Connor's views have to do with such an inquiry anyway? His lawyers, Gerhard Van Arkel and Leonard Boudin, pointed out that O'Connor not only had nothing to do with placing the books in overseas libraries but did not know they were there and did not profit financially from their sale. McCarthy had not asked O'Connor if he was a member of the Communist party, perhaps because the answer was too well known. He asked the vaguer and trickier question, whether O'Connor was a member of "the Communist conspiracy" when his books were purchased "by the old Acheson State Department." If such a question was proper under the First Amendment, was it also proper under the Sixth Amendment which guarantees a man the right to be precisely informed of what he is being accused? Finally—the last ignominious technicality on which the Court could rule for O'Connor—is whether the indictment was not defective because "it failed to state the matter under inquiry, to show that the question was pertinent thereto, or to allege that the Subcommittee was authorized to conduct the investigation." Such are the dodges available in the law.

A Wonder the Old Republic Still Totters On

" 'Communist conspiracy' has become in recent years a term of fixed and precise meaning on the part of Congress and the courts. . . . The term 'Communist conspiracy' embraces more than mere membership in the Communist Party. . . . The present widespread understanding and acknowledgment of the existing Communist conspiracy has gradually evolved since the appearance on the American scene, prior to World War I, of scattered groups of anarchists and others who advocated political violence. . . . The vulnerability of the republican form of government to conspiracies guided from abroad, ready to assume and keep total power by illegal means as soon as the time became propitious, became well understood in this country by the late 1930's."

—Brief for the government in O'Connor v. U.S., p. 39

The Really Painful Experience

What judicial ingenuity will do with these materials remains to be seen. Harvey O'Connor boldly prepared to go to jail on behalf of fundamental principles, like a latter day Christian marching out to face the lions. He may end up by finding himself the victor over a few miserable alleycats. The First Amendment is full of a mighty music for the discerning ear, but who would willingly be a martyr in the cause of the non-defective indictment? This is really painful.

On July 14 it will be three years to the day since O'Connor challenged McCarthy, but—happily—it seems much, much longer. The full-bodied flavor of those wacky days is to be savored again in the government's pleadings. The government brief relates that this particular McCarthy inquiry began when there were complaints that "instead of fighting communism . . . the library program was actually serving the cause of communism by using the books of Communist authors." These were not easily identifiable. "Some of these authors were very notorious Communists, others not so well known. Some of the books were *definitely* anti-American and *viciously* pro-Communist." The italics are ours; presumably other of the books, though by Communists, were not "*definitely*" anti-American nor "*viciously*" pro-Communist. Apparently some of the authors were crafty, but they did not fool the McCarthy subcommittee. "Books by Communist authors which did not appear to be pro-Communist on the surface to the ordinary reader," the Department of Justice went on to argue, "were not considered by any members of the subcommittee to be 'innocent' books and it was felt that they could only advance the Communist party line." Just how the subcommittee members felt this is not explained. Perhaps McCarthy and his colleagues learned to spot a subversive book quickly by the sheer "feel" of it, unlike the inexpert ordinary reader who has to move his lips wearily on from one page to another. So prescient were our mentors in the good old McCarthy era.

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Civil Rights Given Little Chance at This Session

(*Continued from Page One*)

. . . Fantastic: the report here that the White House has selected Senator Knowland as a delegate to the next UN General Assembly after the election. . . .The difference between the Adenauer and Pineau speeches here was quite clear: Adenauer preached mistrust and advocated continued tension, Pineau called for relaxation and for taking advantage of the freer contacts invited by the Russians. The French Foreign Minister said, logically, that until now the Communists had been able to carry on propaganda within France "whereas, up to the present time, the propaganda of freedom and democracy has never been carried on inside Russia and the satellite states. Why should we start with the assumption that our propaganda does not have in itself sufficient weight to convince those whom it will reach?" . . . The press corps, used to the Germanic cold war line (Dulles and Adenauer sound as alike as twins) did not know what to make of the French Socialist. . . . That was a brilliant piece Brooks Atkinson did for the June 18 Sunday *New York Times* but informed sources here believe it was fear of German, not French, sensibilities which led the State Department to discourage the American National Theatre and Academy from sending "The Diary of Anne Frank" to the Paris International Theatre Festival this summer. . . . John Foster Dulles is increasingly unhappy in this Administration, sees Stassen as a rival and has begun to spread reports that he may retire after the election. He will retire happily if he can help engineer the return of General Aniline & Film to I. G. Farben, as pressed by Adenauer. . . . The story of how Hitler through General Aniline help stifle American war potential has been forgotten. When Howard Watson Ambruster, one-time anti-trust consultant here, author of "Treason's Peace: German Dyes and American Dupes," the fullest account of I. G. Farben's operations, tried to testify before the Senate Judiciary subcommittee on S 995, which would restore General Aniline, his testimony was rejected. . . . Another round of inflation is foreshadowed by the steel negotiations; up to now higher wages have been followed by higher prices made possible in turn by armament stimulation for the steel industry. But what happens if the arms race dies down? And isn't it time for labor to see that inflation robs the worker's pay envelope, too? And that we have to find a better way to maintain living standards and jobs than by perpetual inflation?

MEMO TO SENATOR MANSFIELD: If you look at the budget for the German Chancellor's office which went to the Bundestag in Bonn last week, you will notice a new 23 million mark item for a German CIA, the notorious Gehlen agency, but you will also see that this CIA, unlike ours, is to be under parliamentary control. The Senate last April 11 defeated (59-27) your bill for a special joint Congressional committee to supervise CIA, but in Germany a parliamentary committee will be set up as watchdog over the Gehlen organization. Each party will be represented by one member. Gehlen's will be the official external intelligence agency, like Central Intelligence Agency here. Until a year ago the Gehlen outfit was under U. S. control and on the U. S. payroll. This year for the first time it becomes an official West German outfit. Gehlen—as you know—was the Wehrmacht's intelligence chief for East Europe, but the foreign press is now assured in Bonn that he was "never a real Nazi." If Hitler should crawl up out of the ruins in Berlin, it would not surprise us at all to hear that he, too, only joined the Party because he needed a job.

GOOD NEWS OF THE WEEK DEPT.: We rise to applaud James Kutcher, the legless war veteran, and his lawyer, ADA Chairman Joseph L. Rauh, Jr., on the former's reinstatement as a clerk in the Veterans Administration regional office in Newark, N. J. Thus victoriously ends an 8-year fight by Kutcher against his discharge for "disloyalty" because he is a member of the Socialist Workers Party. . . . And we rejoice in the directed acquittal of Marian Bachrach, once our colleague on *PM*, in the current New York Smith Act trial. . . . The Kutcher reinstatement was announced as in compliance with a Court of Appeals decision of April 30 but that decision, like a previous one, was merely procedural. A new case could have been instituted against Kutcher, but somebody in the government finally had sense enough to see the cruel folly of this whole proceeding and throw in the sponge. Kutcher's 8-year battle was as heroic and as much a defense of all that is best in our country as that in which he lost his legs on the Anzio beachhead.

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